

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RANDY C. O'TOOL)	
Claimant)	
VS.)	
)	Docket No. 239,826
METCALF AUTO BODY, INC.)	
Respondent)	
AND)	
)	
UNIVERSAL UNDERWRITERS INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the Preliminary Decision dated January 28, 1999, entered by Administrative Law Judge Robert H. Foerschler.

ISSUES

This is a claim for a left knee injury that allegedly occurred on or about October 26, 1998, and continued each day that the claimant worked through December 10, 1998. After finding that claimant failed to prove that he injured his knee while working for the respondent and failed to prove that he provided respondent with timely notice of the accidental injury, the Judge denied the requested preliminary hearing benefits.

The two issues before the Appeals Board on this appeal are:

1. Did claimant injure his knee while working for the respondent?
2. Did claimant provide respondent with timely notice of the accidental injury?

FINDINGS OF FACT

After reviewing the record compiled to date, the Appeals Board finds:

1. Randy O'Tool began working for Metcalf Auto Body in July 1998. He now claims he injured his left knee at work on or about October 26, 1998, while helping a co-worker remove a tailgate from a pickup.
2. Mr. O'Tool first injured his left knee years before playing high school football. When he began working for Metcalf Auto Body, he was experiencing ongoing knee problems. He would sometimes wear a knee support and sometimes take over-the-counter medications for pain relief.
3. One reason he sought employment at Metcalf Auto Body was to procure health insurance benefits, which he did not have at his previous employer. When he began working for the body shop, he advised Lynn Dewey, one of the shop's co-owners, that he would probably need knee surgery.
4. Mr. O'Tool did not provide notice of the alleged October accident or his knee injury until sometime in mid-November.
5. Mr. O'Tool continued to work for the body shop until approximately December 10, 1998. By that time his symptoms had worsened to the point he could no longer work. He then sought medical treatment.
6. After requesting and obtaining a letter from the body shop that the knee injury was not work related, Mr. O'Tool underwent left knee arthroscopy that included partial medial and lateral meniscectomies.
7. The record does not contain a medical opinion that addresses the issue of when the left knee injury occurred. Further, the record does not contain a medical opinion that addresses the issue of whether Mr. O'Tool sustained additional injury while he continued to work after the initial alleged October incident.

CONCLUSIONS OF LAW

1. The Preliminary Decision should be affirmed.
2. The Workers Compensation Act requires an injured worker to provide notice of the accidental injury within 10 days of the incident.¹ But if "just cause" is shown, that period is extended to 75 days.
3. The Judge found that Mr. O'Tool failed to prove that he provided notice within the required 10-day period. The Appeals Board agrees. The first time that Mr. O'Tool provided information that could be construed as notice of an October accidental injury was

¹ K.S.A. 44-520.

sometime in mid-November, which would appear to be outside of the required 10-day period. Further, the present record does not establish that just cause exists to excuse Mr. O'Tool's failure to provide notice within 10 days.

4. The Judge found that Mr. O'Tool did not prove that he sustained additional injury while working for the body shop. Based upon the present record, the Appeals Board agrees. When he began working for the body shop, Mr. O'Tool had ongoing knee symptoms, which he felt were probably serious enough to require surgery. In the absence of a medical opinion that addresses causation, the Appeals Board adopts the Judge's conclusion that the present record fails to prove that Mr. O'Tool injured his knee while working for the body shop.

WHEREFORE, the Appeals Board affirms the Preliminary Decision dated January 28, 1999, entered by Administrative Law Judge Robert H. Foerschler.

IT IS SO ORDERED.

Dated this ____ day of March 1999.

BOARD MEMBER

c: Michael R. Wallace, Shawnee Mission, KS
Mark O. Sanderson, Kansas City, MO
Robert H. Foerschler, Administrative Law Judge
Philip S. Harness, Director